HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 77 of 2004 (M/S)

Rajesh Kumar ..... Petitioner

Versus

Civil Judge (SD), Pithoragarh &
Others ..... Respondents

Sri B.S. Adhikari, Advocate for the petitioner
Sri V.K. Bisht, Sr. Advocate assisted by Miss Seema Sirohi for the respondents.

Dated: 18.8.2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 11.8.2003 passed by the Civil Judge (SD), Pithoragarh.

Briefly stated the facts giving rise to the present writ petition are that a suit was filed by the plaintiff for permanent injunction restraining the respondents from making any construction as well as for possession over the property in suit. During the pendency of the suit plaintiff has moved application on 11.12.2002 under Order 39 Rule 1 C.P.C. for temporary injunction. A perusal of the application for injunction shows that the petitioner wanted at the initial stage that the injunction may be granted restraining the respondents from making any

construction over the ownership of the land of the petitioner. The application for appointment of Advocate Commissioner also shows that the respondents have started making construction after evicting the petitioner forcibly on 8.12.2002. The intention of the defendant is to raise construction over the property so as to make the suit infructuos.

The counsel for the petitioner has submitted that on 16.12.2002, he further moved an application that on the spot defendants are making illegal construction and it is necessary that his application may be disposed of accordingly. Similar application was made on 20.12.2002 and 0n 16.1.2003d praying that by way of injunction the defendant may be restrained from making any construction on the disputed property.

However, on 1.5.2003, the Commissioner has reported that he had seen some changes in the boundaries because of the construction made during the pendency of the case. The petitioner has moved an application for amendment during the pendency of the suit under Order 6 Rule 17 C.P.C. but since no order was passed as the result of which the defendant started making construction and even the order of status quo has been violated and the entire land of 800 Sq. feet. Has been converted into constructed area and as the result of which boundaries have been changed. The amendment which was sought by the petitioner has been described in paragraph 6 and 7 which are quoted below:

6 यह कि मौके में वादगत भूमि के दो स्थाई सीमा चिन्ह उत्तर में डी सी एम की दुकान पष्चिम में पक्की सडक आज भी वजूद में है। वादलाते समय वादपत्र में वर्णित चारों चौहददी चिन्ह वजूद मे थे इसलिए वादी ने वादपत्र में भूमि की लम्बाई चौडाई नही दील थी। चूॅकि अब प्रतिवादीगण ने उक्त वर्णित दो चौहददी चिन्ह अवैध र्निाण करके विगाड दिये हैं

इसलिए न्याय पाने के लिए एवं प्रभावी आदेष करने के लिए वादगत भूमि की लम्बाई चौडाई संषोधन द्वारा वादपत्र में लाया जाना न्यायहित में आवष्यकीय हो गया है ।

7 यह कि वादी वादगत भूमि प्लाट सं0 240 मध्ये 800 वर्ग फीट हैं जिसके उत्तर में डी सी एम की दुकान की खुली भूमि थी और पष्चिम में पक्की सडक वजूद में है इसलिए वादी संषोधन करके वादपत्र में सम्पत्ति की चौहदी के पैरा में दुकान का खुला भाग के बाद निम्न षब्द जोउना चाहता है।

डी सी एम की दुकान से दक्षिण की ओर 16 फीट में जगदीष चन्द्र पान वाले की दुकान का खुला भाग व पष्चिम की पक्की सडक से पूरब की ओर 50 फीट बंजर भूमि कुल 50 16 – 800 वर्गफीट भूमि।

The respondents have contested the case by filing counter affidavit. The counsel for the respondent has submitted that on the garb of amendment application the petitioner wants to amend his plaint after the report of the Vakil Commissioner. The application has been filed at a belated stage and with mala fide intention. The respondents have admitted this fact that sale deed to acquire the title over the said 800 Sq. feet land in plot no. 240 nowhere states the dimensions of the land alleged to have been sold to the petitioner. In the counter affidavit further in paragraph 25 the respondent has stated that the petitioner deliberately did not give the length and breadth of the land in dispute as he was never in possession of any piece of land over plot no. 240 but only gave the area of the land as 800 Sq. feet as stated in the sale deed which was in fact a sham transaction.

The amendment application has been opposed only on the ground that since the entire dimension has not been given by the plaintiff therefore, the amendment is an afterthought and the same may be rejected. The respondents have also stated that they have never violated the order of status quo.

A perusal of the amendment application shows that the plaintiff petitioner who has filed the suit for the relief of injunction as well restraining the respondent from making any construction, plot number and area in dispute remains the same and only the petitioner wanted to clarify that the boundaries of the suit land have been changed during the pendency of the suit itself. Similar matter came up before the Allahabad High Court where in 20003 (1) ARC 562, Ganpat Lal Gupta and others vs. Vth Adll. District Judge, Deoria and other, where the Commissioner reported some construction on the laid after the suit filed. Application for amendment of the plaint seeking relief of demolition of such constructions trial Court. Revision against the said orders was allowed. It was held by the Allahabad High Court that in order to avoid multiplicity of legal proceedings pliant required to be amended in view of the judgment in the case B.K. Narayana Pillai vs. Parameshwaran Pillai and another 2000 (1) SCC 712. It has been emphasised in the aforesaid decision that technicalities of law should not be permitted to hamper the cut in administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled multiplicities of litigation. In the case of Keshwa Nand Puri vs. State of Uttaranchal [2003 (2) ARC 463] I have taken vie that Order VI Rule 17, it is a settled law that Court has only to look as to whether the ingredients of Order VI rule 17 are satisfied. Amendment can be allowed at any stage of proceedings on such terms as may be just and proper.

In the case Raghu Thilak D. John vs. S. Rayappan and others (2001 2 SCC 472 the Apex Court has held as under:

"If the aforesaid test is applied in the instant case, the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the

litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case, as is evident from the perusal of averment made in paras 8 (a) to 8(f) of the plaint which were sought to be incorporated by way to amendment. We feel that in the circumstances of the case the plea of limitation being disputed could be made a subject matter of the issue after allowing the amendment prayed for."

In view of the aforesaid fact the order passed by the Court below refusing the amendment cannot be sustained. The writ petition is, therefore, allowed. The trial Court is directed to permit the petitioner to amend his plaint accordingly. In view of the order allowing amendment in the plaint the petitioner may be permitted to make consequential amendment in the injunction application.

No order as to costs.

(Rajesh Tandon J.)

18.8.2004
*Dhyani